



March 23, 2001

Mr. John Dewey  
City Attorney  
City of Lake Jackson  
5 Oak Drive  
Lake Jackson, Texas 77566

OR2001-1143

Dear Mr. Dewey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145269.

The City of Lake Jackson (the "city") received a request for specified 911 and police dispatcher audiotapes. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You have not provided the responsive information, or a representative sample thereof, to this office for review.

A governmental body that wishes to withhold requested information must provide to the Attorney General a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy, no later than fifteen days after the governmental body receives the written request for information. Gov't Code § 552.301(e). If the governmental body does not comply with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). The need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991). You assert that the district attorney of Brazoria County has indicated that this information relates to an ongoing criminal investigation. However, you have not provided the responsive information to this office as required. In the absence of the responsive information, we are unable to determine whether the ongoing investigation constitutes a compelling reason sufficient to overcome the presumption of openness that results from the county's failure to comply with section 552.301. Thus, we have no choice but to order the information released per section 552.302 of the Government Code. If you have responsive information that you believe to be confidential and therefore may not be lawfully released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

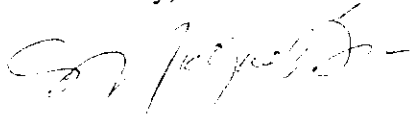
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Jay Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 145269

Encl: Submitted documents

cc: Mr. John Steiger  
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(w/o enclosures)